

June 21, 2006

By E-mail and U.S. Mail

Alessandro A. Iuppa, Superintendent
Attn: Vanessa J. Leon, Docket No. INS-05-700
Bureau of Insurance
Maine Department of Professional & Financial Regulation
34 State House Station
124 Northern Avenue
Gardiner, Maine 04333-0034

**Re: In Re: Review of Aggregate Measurable Cost Savings Determined by Dirigo
Health for the Second Assessment Year
Docket No. INS-06-900**

Dear Superintendent Iuppa:

Enclosed for filing in the above-referenced matter please find an original and one (1) copy of the following documents:

1. Filing Cover Sheet; and
2. Maine State Chamber of Commerce Consolidated Opposition to CAHC Motion for Informational Request and to Present Additional Evidence and DHA Motion to Present Additional Evidence

Thank you for your attention to this matter.

Very truly yours,

/s/ William H. Stiles

William H. Stiles

WHS/rdl

Enclosure

cc: Service List (***By E-mail and U.S. Mail***)

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE: REVIEW OF AGGREGATE)
 MEASURABLE COST SAVINGS)
 DETERMINED BY DIRIGO) FILING COVER SHEET
 HEALTH FOR THE SECOND)
 ASSESSMENT YEAR)

DOCKET NO. INS-06-900

To: Alessandro Iuppa, Superintendent of Insurance
Attn: Vanessa J. Leon

Dated Filed: June 21, 2006

Name of Party: Maine State Chamber of Commerce

Document Title Consolidated Opposition to CAHC Motion for Informational Request and
 to Present Additional Evidence and DHA Motion to Present Additional
 Evidence

Document Type: Opposition to Motion

Confidential: No

Respectfully submitted,

/s/William H. Stiles
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STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE:	REVIEW OF AGGREGATE)	
	MEASURABLE COST SAVINGS)	MAINE STATE CHAMBER OF
	DETERMINED BY DIRIGO)	COMMERCE CONSOLIDATED
	HEALTH FOR THE SECOND)	OPPOSITION TO CAHC
	ASSESSMENT YEAR)	MOTION FOR LEAVE
)	TO SERVE INFORMATIONAL
)	REQUEST AND/OR PRESENT
)	EVIDENCE AND DIRIGO
)	HEALTH'S MOTION FOR
	DOCKET NO. INS-06-900)	LEAVE TO PRESENT
)	ADDITIONAL EVIDENCE

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STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE:	REVIEW OF AGGREGATE)	
	MEASURABLE COST SAVINGS)	MAINE STATE CHAMBER OF
	DETERMINED BY DIRIGO)	COMMERCE CONSOLIDATED
	HEALTH FOR THE SECOND)	OPPOSITION TO CAHC
	ASSESSMENT YEAR)	MOTION FOR LEAVE
)	TO SERVE INFORMATIONAL
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)	HEALTH'S MOTION FOR
	DOCKET NO. INS-06-900)	LEAVE TO PRESENT
)	ADDITIONAL EVIDENCE

NOW COMES the Maine State Chamber of Commerce (the "Chamber"), by and through its undersigned attorneys, and hereby opposes the Consumer for Affordable Health Care's ("CAHC") Motion for Leave to Serve Informational Request and/or Present Evidence, and to the Dirigo Health Agency's ("DHA") Motion for Leave to Present Additional Evidence. In support thereof, the Chamber states as follows:

INTRODUCTION

CAHC moves for leave to serve informational requests upon the Dirigo Health Agency, looking for very specific information which, curiously, CAHC (but no other party) was aware "DHA now has in its possession." CAHC Motion at page 2. Apparently dissatisfied with the Dirigo Health Agency Board's (the "Board") decision on three of the four savings initiatives (CMAD, CON/CIF, and Uninsured), CACH also seeks to present additional evidence that it knows DHA has because "this new evidence will demonstrate additional savings in these areas." Id. CAHC represents that the parties understood and agreed to the unbridled presentation of additional evidence on substantially all of the savings initiatives presented to the Board over two days of administrative hearings. Review of the record, however, and indeed even review of the

information cited by CAHC, demonstrates that this representation is incorrect. Moreover, as explained below, CAHC's Motion to re-argue substantially all of the underlying matter should be denied.

ARGUMENT

I. THE PARTIES DID NOT AGREE THAT DHA OR CAHC MAY RE-PRESENT THEIR CASES BEFORE THE SUPERINTENDENT

From day one, the Chamber's position has been that the Board was limited to considering information available to it on April 1, 2006.¹ See Maine State Chamber of Commerce Opposition to the Dirigo Health Agency's Motion to Continue Hearing and to Suspend Filing Deadlines, **AR 1, p. 123**; see also Maine State Chamber of Commerce Objection to the Recommended Decision by the Hearing Officer regarding the Dirigo Health Agency's Motion to Continue Hearing and to Suspend Filing Deadlines, **AR 1, p. 373**. Stated another way, activities in Maine's health care system relating to a time period that falls after the statutory April 1, 2006 deadline cannot possibly form the basis of a determination of aggregate measurable cost savings for the Second Assessment Year.

DHA nevertheless steadfastly maintained that it needed additional data, *i.e.*, unavailable cost reports for the CMAD calculation, to develop its CMAD methodology. Thus, in the alternative, without waiving its argument that the cost reports are irrelevant because CMAD is an invalid savings initiative, the Chamber indicated in argument that it would not object to permitting the DHA to supplement the record before the Superintendent with data from cost reports as they become available provided that the methodology was established and identified specific, objective cost report data entries. **AR 1, p. 377**; see also Exhibit # 1 to CAHC Motion, p. 56, line 12 through p. 62, line 5. Thus, contrary to CAHC's representations, the Chamber

¹ The fact that DHA reached forward to capture as much future savings as possible in the Year One savings determination, presumably was a well-informed decision, with appreciation of the impact it would have on Year Two.

expressed only the narrow view that DHA might be able to input certain previously specified objective data from cost reports into their CMAD spreadsheet. What is more, Justice Marden's Order does not permit supplementation of the record by CAHC or DHA. Rather, the Board was ordered to make its determination no later than May 12. **AR 2, p. 629.**

II. CAHC'S MOTION SHOULD BE DENIED BECAUSE DHA AND CAHC HAD FULL OPPORTUNITY TO PRESENT THEIR METHODOLOGIES TO THE BOARD AND THE SUPERINTENDENT'S ROLE ON REVIEW IS LIMITED

As an initial matter, it is clear that DHA and CAHC are working together. There is no other way to explain why CAHC is aware of "evidence" "which DHA now has in its possession." CAHC's expert worked with DHA to develop the Uninsured Savings Initiative, CAHC counsel cross-examined the Chamber's witnesses, and engaged in friendly re-direct of DHA's witnesses. In effect, CAHC is serving as a proxy to offer arguments for the DHA. Putting aside the issue of whether CAHC has standing to present additional evidence to increase savings, the information CAHC seeks to present is not "new evidence" but rather (at best) an analysis that could have been presented by either party at the hearing, but was not. Accordingly, CAHC's Motion should be denied for at least the following reasons:

First, opening the record to receive previously undisclosed analysis and other unspecified information will require the Superintendent to substantially change the nature of the hearing. If the record is opened to this information, the Superintendent must also give the Chamber the opportunity to engage in discovery/informational requests, to cross-examine witnesses, and to provide rebuttal evidence and testimony. Thus, granting CAHC's Motion will require a de novo hearing which is not presently contemplated, for which the parties do not have ample time, and (as discussed below) is entirely unnecessary. Furthermore, this information will not be available sufficiently in advance of the June 23, 2006 deadline for Intervenors' briefs. Since the CAHC (and DHA) have not disclosed this information, and because they waited until the last possible

moment to file their Motion, the Chamber will be prejudiced if this Motion is granted. The Superintendent's role is limited as compared to the First Assessment Year, and does not contemplate a second de novo hearing. The Superintendent's review should be limited to the Board's determination as reflected in the filing of Dirigo, as required by statute and consistent with Justice Marden's Order.

Second, DHA and CAHC had ample time to prepare for the hearings before the Board. In fact, the record indicates that DHA and CAHC started working hand-in-hand to create methodologies that produce savings as early as February 2006. The Chamber and other intervenor parties on the other hand, were forced to fight for any information from DHA concerning the proposed Second Assessment Year savings methodologies. **AR 2, p. 680; AR 2, p. 1033.** Under specific Order of the hearing officer, DHA finally produced its savings methodologies just three business days before the first hearing date. Despite this late production, the Chamber was able to review DHA's and Mercer's methodology, prepare its expert witnesses, and present a rebuttal case. On the other hand, despite the advantage of sharing information with the DHA, the CAHC did not prepare a case, and in fact, declined to call its listed expert witness (Dr. Thorpe) at the hearing. The CAHC (and DHA) therefore cannot complain they did not have enough time to gather evidence and present argument to the Board.

Third, the CMAD issue was fully developed before the Board, and all parties had an opportunity to review and rebut evidence presented concerning the CMAD methodology. Indeed the CAHC had an opportunity to develop the case it now hopes to present, but declined to do so. It should not get a second bit of the apple. Although CAHC contends that the Chamber's presentation on CMAD was given "cursory attention" and was "scarcely mentioned" at the hearing, it clearly made an impression on the Board. A review of the record reveals that perhaps only the CAHC gave the Chamber's evidence cursory attention. The Chamber repeatedly voiced

its concern that Mercer's CMAD methodology improperly generated savings because the baseline projection included only three years, and 2002 was a year of substantial, anomalous growth, skewing the baseline. See Chamber's Supplemental Brief **AR 3, p. 1235**; see also Testimony of John Sheils, **AR 11, p. 5165 (p. 144, line 22 through p. 145, line 3); AR 11, p. 5168 (p. 155, line 12 through p. 160, line 8)**; see also Chamber's Cross-Exam of Mr. Schramm. In fact, Anthem raised this very same concern as well, and also highlighted Mr. Sheils testimony concerning possible ways to address. See Testimony of Jack Keane, **AR 11, p. 5179 (p. 197, lines 10-15)**. The Chamber highlighted the flaws in the Mercer CMAD methodology by demonstrating the very different outcomes calculated by adding just one year to the base period, or using the median growth rate. See Testimony of John Sheils, **AR 11, p. 5168 (p. 155, line 12 through p. 160, line 8)**. The CAHC was fully aware of the Chamber's concerns and criticisms, and elicited questions to rebut. See Testimony of Steven P. Schramm, **AR 11, p. 5141 (p. 47, line 15 through p. 49, line 19)**. The CAHC should not get a second bite of the apple.

III. DHA'S MOTION SHOULD BE DENIED TO THE EXTENT IT SEEKS TO PRESENT EVIDENCE OTHER THAN COST REPORT DATA FOR THE PURPOSES OF CMAD AND UNINSURED SAVINGS INITIATIVES

DHA seeks to introduce new information concerning CMAD, Uninsured Savings Initiatives, and CON/CIF. Without waiving the Chamber's legal and factual objections to counting CMAD and Uninsured Savings Initiatives in the first instance, the Chamber does not object to the presentation of objective data from cost reports, *i.e.*, updating Mercer's CMAD spreadsheet with cost reports that are now available, and updating the cost-to-charge ratio for the purposes of Uninsured Savings Initiatives. However, the Chamber objects to the introduction of any other evidence, including any evidence relating to CON/CIF.

The cost reporting data for CMAD and the Uninsured Savings Initiative relates to activities that occurred before April 1, 2006, but for reasons having to do with hospital fiscal

years and filing requirements, may not be available by April 1. In addition, this information is objective data that generally is not subject to interpretation. With CON/CIF, however, the reason DHA did not have all of the information before the Board was because the activity that the methodology attempts to measure did not occur until after April 1, the statutory deadline for the Board to determine savings. Thus, as a matter of law, the Board may not consider this information. Also, the Chamber believes this information is not objective, and may be subject to interpretation. Therefore, to the extent DHA seeks to introduce any evidence other than objective data for CMAD and cost-to-charge ratios for the Uninsured Savings Initiative, the Superintendent should deny the Motion.

WHEREFORE, the Chamber respectfully requests that the Superintendent deny CAHC's Motion. In addition, the Chamber respectfully requests that the Superintendent deny DHA's Motion to the extent it seeks the addition of any data other than specific objective cost reporting data for the purposes of CMAD and cost-to-charge ratios for the Uninsured Savings Initiative.

If the Superintendent grants CAHC's Motion, or DHA's Motion to the extent it seeks to present evidence other than cost report data for the purposes of CMAD and cost-to-charge ratios for the Uninsured Savings Initiative, then the Chamber hereby requests that the Superintendent in all fairness also Order that:

- (1) All additional evidence be produced immediately, and in no event, not less than twenty-one (21) days before the first hearing date;
- (2) Intervenors may submit informational requests regarding the additional evidence so produced;
- (3) All additional evidence must be supported by prefiled testimony subject to cross-examination; and

- (4) Intervenorors are allowed to submit rebuttal evidence and testimony with respect to that additional evidence.

Dated: June 21, 2006

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, William H. Stiles, attorney for the Maine State Chamber of Commerce, hereby certify that on this day the foregoing document was served on the following parties via first-class mail and electronic mail:

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